

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 13, 2000 Session

DANIEL BENSON TAYLOR v. STATE OF TENNESSEE

**An Appeal from the Tennessee Claims Commission
No. 20000232 Randy C. Camp, Commissioner**

No. W2000-01467-COA-MR3-CV - Filed July 31, 2001

This is an appeal from the Tennessee Claims Commission. The plaintiff, a prisoner, filed a claim against the State under Tennessee Code Annotated § 9-8-307(a)(1)(N) (Supp. 2000) for negligent deprivation of his statutory rights. The Claims Commission dismissed for lack of subject matter jurisdiction. On appeal, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission
Affirmed**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Daniel Benson Taylor, Only, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Mary M. Bers, Senior Counsel, Office of Attorney General and Reporter, for the appellee, State of Tennessee.

MEMORANDUM OPINION¹

In this case, Plaintiff/Appellant Daniel Benson Taylor, a prisoner, filed a claim for negligent deprivation of statutory rights with the Division of Claims Administration on August 10, 1999. His claim was transferred to the Tennessee Claims Commission on November 9, 1999.

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

In his complaint, Taylor asserted that the Claims Commission had jurisdiction over his claim pursuant to Tennessee Code Annotated § 9-8-307(a)(1)(N). He claimed that, prior to October 1983, the Defendants, the State of Tennessee, Judge William H. Williams, District Attorney General John W. Pierotti, Assistant District Attorney General James C. McLin, and Assistant Public Defender Leslie Fatowe, deprived him of his legal rights under the 1982 Criminal Sentencing Reform Act, and violated his “vested right to vote.” He also claimed that the Defendants negligently breached their duty by:

erroneously instructing the jury that they had the authority to sentence Plaintiff; (2) by allowing the jury to exceed their statutory authorization to determine guilt or innocence, by sentencing the Claimant; (3) by allowing the Plaintiff to be sentenced under their racial-based, ethnic-animus or gender-motivated animus, rather than under the 1982 Sentence Reform Act

Taylor also named Judge John P. Colton and District Attorney General William L. Gibbons as Defendants, alleging that they had breached their legal duty to him by delaying his application for a writ of error *coram nobis*, and that they were guilty of “racial-based, ethnic-animus or gender-motivated animus.”

On December 9, 1999, the State filed a Motion to Dismiss pursuant to Rule 12.02 of the Tennessee Rules of Civil Procedure. In its motion, the State asserted that the Claims Commission did not have subject matter jurisdiction over Taylor’s claim for negligent deprivation of statutory rights because none of the statutes grant a private right of action in his favor, as required by Tennessee Code Annotated § 9-8-307(a)(1)(N). The State also asserted that the judicial and prosecutorial immunities of the individual Defendants inured to the State, and that Taylor’s claim was time-barred under the applicable statute of limitations.

In his response to the State’s Motion to Dismiss, Taylor elaborated on his claim. He admitted that on September 20, 1980, he committed second degree murder, and that on October 16, 1982, he was sentenced by a jury to life imprisonment. He asserted that the Defendants had breached their legal duties by failing to instruct the jury to sentence him under the “more lenient” 1982 Criminal Sentencing Reform Act, and that they had violated Tennessee Code Annotated § 40-20-112 by stripping him of his right to vote when he had not committed an “infamous” crime.

On February 7, 2000, the Tennessee Claims Commission dismissed Taylor’s claim for lack of subject matter jurisdiction. From this order, Taylor now appeals. On appeal, he argues that the Claims Commission erred by dismissing his complaint for lack of subject matter jurisdiction.

An appeal from the Tennessee Claims Commission is reviewed *de novo*, with a presumption of correctness in its findings of fact. *See Dobson v. State*, 23 S.W.3d 324, 328-29 (Tenn. Ct. App. 1999). In reviewing a dismissal under Rule 12.02, we assume all of the plaintiff’s allegations to be true and review the lower court’s legal conclusions *de novo* with no presumption of correctness. *See King v. Danek Medical, Inc.*, 37 S.W.3d 429, 453-54 (Tenn. Ct. App. 2000).

Tennessee Code Annotated § 9-8-307 sets forth the jurisdiction of the Tennessee Claims Commission. Section 9-8-307(a)(1)(N) states that the Claims Commission has jurisdiction to decide claims against the State for:

Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions; . . .

Tenn. Code Ann. § 9-8-307(a)(1)(N) (Supp. 2000). Therefore, the statute conferring jurisdiction specifies that the claimant must show express statutory language granting individuals a private right of action to enforce the rights granted by the statute.

In order for the Claims Commission to have jurisdiction over Taylor's action for negligent deprivation of statutory rights, there must be *express* language indicating that the legislature intended to create a private right of action. Consequently, for every statutory right of which Taylor claims the Defendants negligently deprived him, Taylor must point to specific statutory language conferring upon him a private right of action to enforce the statute.

Taylor asserts that State officials negligently deprived him of statutory rights under the 1982 Criminal Sentencing Reform Act, codified in Tennessee Code Annotated §§ 40-35-101 through 40-35-504,² and that they deprived him of his "vested voting rights" under section 40-20-112. Taylor has not cited express language in either statute that grants a private right of action in his favor. Under these circumstances, we find no error in the Claims Commission's dismissal for lack of subject matter jurisdiction.

The decision of the Tennessee Claims Commission is affirmed. Costs on appeal are taxed to the Appellant, Daniel Benson Taylor, and his surety, for which execution may issue if necessary.

HOLLY KIRBY LILLARD, JUDGE

² In 1989, the Tennessee General Assembly repealed the 1982 Criminal Sentencing Reform Act, and replaced it with the Tennessee Criminal Sentencing Reform Act of 1989. *See* 1989 Tenn. Pub. Acts 591.